

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. NO.: 05-11490 JLT

FILED
CLERKS OFFICE
U.S. DISTRICT COURT
DISTRICT OF MASS.
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TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA (FORMERLY
KNOWN AS THE TRAVELERS
INDEMNITY COMPANY OF ILLINOIS)
INDIVIDUALLY AND A/S/O DACON CORPORATION
AND CONDYNE VENTURES, LLC.,

Plaintiff

v.

GENESIS INDEMNITY INSURANCE COMPANY
and TIG INSURANCE COMPANY,

Defendants

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT**

Now comes the Plaintiff in the above captioned action (hereinafter referred to as "Travelers") and moves this Honorable Court for Summary Judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. As grounds for this motion, Travelers states that there are no genuine issues of fact in dispute and Travelers is entitled to judgment as a matter of law.

Specifically, and as set forth more fully in the concurrently filed *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment on Count I of the Complaint*, Travelers moves that this Honorable Court enter a declaratory judgment in favor of Travelers to the effect that Travelers insureds¹ in an underlying action (entitled Martin, et al. v. Dacon Corporation, et al., Commonwealth of Massachusetts, Bristol County Superior Court, Civil Action No. BRCV2002-00168; hereafter referred to as the "Martin action") are additional insureds covered by the insurance policies issued by Genesis

¹ Dacon Corporation and Condyne Ventures, LLC.

Indemnity Insurance Company (“Genesis”) and TIG Insurance Company (“TIG”)², and that coverage should be provided to Dacon Corporation (“Dacon”) and Condyne Ventures, LLC (“Condyne”) pursuant to the Genesis and TIG policies.

In further support of this motion, the Plaintiff respectfully refers this Honorable Court to the concurrently filed *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment on Count I of the Complaint*; the *Plaintiff's Statement of Undisputed Facts in Support of Plaintiff's Motion for Summary Judgment on Count I of the Complaint*; and *Plaintiff's Appendix of Exhibits in Support of Plaintiff's Motion for Summary Judgment on Count I of the Complaint*.

RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1, counsel for the Plaintiff conferred in good faith with counsel for Genesis and TIG before filing this motion, and the parties were unable to resolve or narrow the issues presented by this motion.

REQUEST FOR ORAL ARGUMENT

The Plaintiff hereby requests oral argument, as the Plaintiff believes that oral arguments would assist and be beneficial to the Court.

WHEREFORE, the plaintiff, Travelers Property Casualty Company of America (formerly known as The Travelers Indemnity Company of Illinois) demands judgment against Genesis Indemnity Insurance Company and TIG Insurance Company in the form a declaration that:

- A) Dacon and Condyne are entitled to coverage as additional insureds in connection with the Martin action under both the Genesis policy and the

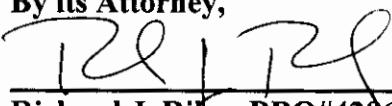
² The named insured on the Genesis and TIG policies at issue is Environmental Fire Protection, Inc. (“EFP”).

TIG policy issued to EFP;

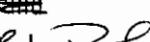
- B) Genesis shall immediately assume the defense of Dacon and Condyne in the Martin action and shall reimburse Travelers for all attorneys' fees and costs incurred by Travelers in defending Dacon and Condyne up to, and including, the date on which Genesis assumes the defense of Dacon and Condyne;
- C) Genesis (and to the extent any judgment or settlement reaches the limits of the TIG policy, TIG) shall be obligated to indemnify Dacon and Condyne for any judgment or reasonable settlement that may be awarded to the plaintiffs in the Martin action in accordance with the terms of the Genesis and TIG policies.
- D) Genesis shall reimburse Travelers for its reasonable attorneys fees incurred in the prosecution of the instant action;
- E) Such other relief as the Court deems meet and just.

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COMPANY OF AMERICA (FORMERLY
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INDIVIDUALLY AND A/S/O DACON
CORPORATION AND CONDYNE
VENTURES, LLC**

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CERTIFICATE OF SERVICE

I Hereby Certify That On This Day
A True Copy Of The Within Document
Was Served Upon The Attorney Of
Record For Each Party By Mail/

Dated: 11/1/05 